Quid Novi

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The Science of Legal Writing

by J. Hubris Verbosis
(with the assistance of M. Wilhelmson)

«Flow, Welsted, flow! like thine inspirer, beer,
Tho' stale, not ripe; tho' thin, yet never clear;»
(The Dunciad)

Notwithstanding, those old grammar books and years spent cursorily attending lectures in the use of English, a party should not undertake the performance of a legal tract without first learning the basic principles of juridical writing pursuant to wise and learned sources. These wise and learned sources can per chance be found (*mutadis mutandis*) in the libraries of the great jurists of our legal tradition. One such jurist is K. Bernard Longwind C.J.C. of the High Court, a colleague of mine and known frequentee of my presence. But let us not digress - *ne quid nimis* - or if I may quote the motto of Scotland: *Nemo me impune lacessit* (no one assails me with impunity).

As I have so well illustrated, legal writing requires large and widespread use of quoted matter to lend worth and authority to what otherwise would be simple and clear (see Haley's Handy Hints). The older the quotation the more valuable, for authority requires age to mellow (*in vino veritas; supra* at 1 207). If the quoted matter uses classical, Norman French, archaic expressions or quotes directly from the Dane law, it should be cited at length, *inter alia*, as above. As noted:

«Before the time for delivery it is found that the potato disease had appeared...»

and

«The thing to be done by force of the

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Breaking the silence

by Alison Wheeler, LLB III

By the time you read this the Native law conference will be a distant event in the pre-spring break era. In the hopes that all is not forgotten, there are a few remarks I'd like to make. The first three relate directly to the present and future life of the conference. The fourth is a bit tangential but it's pretty rare that I write for the Quid, so I thought I'd throw it in. An event such as the Native law conference has a few things to teach us all, professor and student alike, so in making these remarks I'm hoping that my audience here might just be the odd prof as well as students looking for something to give their brain some relief from the over-stimulation of law lecture.

The first thing is that an event like the conference doesn't happen without the help of a lot of unsung heroes. You are too many to name. You are students, staff and professors, and you deserve a big vote of thanks. You know who you are - you translated, you gophered, you videotaped, you registered people, you dog-sat, you served food, you lent phones, faxes and photocopiers, you took phone messages, you rearranged or cancelled lectures, you put up signs, and you provided an encouraging word when the preparation was going badly and a word of appreciation when the event

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In this issue

Dans ce numero

ANNOUNCEMENTS

ANNONCES

POSITION OF ASSISTANT TO THE DIRECTOR, LEGAL METHODOLOGY PROGRAMME - Students who are interested in applying for the position of Assistant to the Director of the Legal Methodology Programme for the 1991-92 academic year are requested to submit an application letter along with a curriculum vitae to Professor Alison Harvison Young no later than Friday, March 8th. Students who wish to obtain further information about this position should contact Prof. Harvison Young.

POSITION OF TUTORIAL LEADER, LEGAL METHODOLOGY PROGRAMME - Students who are interested in applying for a position of tutorial leader with the Legal Methodology Programme for the 1991-92 academic year are requested to pick up and fill out an application form at the Student Affairs Office. These forms should be returned to the S.A.O. no later than Friday, March 8th. Students who wish to obtain further information about the tutorial programme and the credits awarded are asked to see Prof. Harvison Young, the current Director of the Programme, or Pierre Larouche, the current Assistant to the Director. Please note that the $300 honorarium will no longer be paid to tutorial leaders in the academic year 1991-92.

POSITION OF ASSISTANT TO THE DIRECTOR (COMPUTER RESEARCH), LEGAL METHODOLOGY PROGRAMME - Students who are interested in applying for the position of Assistant to the Director (Computer Research), Legal Methodology Programme for the academic year 1991-92 are requested to submit an application letter along with a curriculum vitae to the Office of the Dean no later than Friday, March 8th. This position will involve the ongoing supervision of the Computer Room on the second floor of New Chancellor Day Hall, as well as the instruction of second-year students on legal databases such as SOQUIJ and QUICKLAW. Students who wish to obtain further information about the position should contact Pierre Larouche.

RECYCLING - Recycling has arrived in the Faculty. A test period will last several weeks to determine exactly what our needs are. Any and all comments are welcome and should be directed to Bram. Keep an eye out for bins and let's do our part!

LAW & YOU SEMINAR - On March 6th, from 8h00 to 17h00 will be held a conference on the topic of «Construction and Real Estate» in the Moot Court.

LEGAL THEORY PROGRAMME - Distinguished Visitor Professor David Sugarman (Lancaster) will give four lectures on modern legal history on the following dates: Monday March 4th, room 202 at 12h00 on the topic of «Law and the Enlightenment»; Tuesday March 5th, room 202 at 12h00 on the topic of «A Critical Review of the New History of Crime, Punishment, and Policing»; Wednesday March 6th, room 101 at 12h00 on the topic of «In the Spirit of Weber: Law, Modernity and "the Peculiarities of the English"»; and finally, on Friday March 8th, room 202 at 12h00 on the topic of «New Directions in Anglo-American Legal History». Copies of background readings for the lectures will be on reserve in the Law Area Library. These lectures have been made possible by financial assistance from the Beatty Memorial Lectures Committee.

TRIAL BY JURY - The Gilbert & Sullivan favourite «Trial by jury» will be performed by our faculty's very own «Not yet ready for Superior Court» players in the Moot Court on Thursday, March 7th. There will be two performances in the late afternoon and early evening, respectively. All proceeds will be donated to the new law library, so come out and enjoy yourselves. Tickets on sale this week.

QUID NOVI - Avis aux personnes intéressées à travailler au Quid Novi l'an prochain: If you're interested in working for the Quid next year, you **must** drop off your name and phone number in the Quid box in the LSA office either Monday, March 11th or Tuesday, March 12th, before 1h00 p.m. A meeting will then be held on Wednesday at noon with those people whose names we've gotten. La charge de travail qu'implique une participation au Quid consiste essentiellement à assister à une réunion hebdomadaire, faire de la correction d'épreuves, solliciter et écrire des articles de façon régulière. Existing positions for next year are: Editor-in-Chief, Information Director (responsable for covering conferences and other events in the Faculty), Production Director (responsable for supervising layout and presentation of issues), Administrative Director (responsible for all financial matters) and Editors (basically do the job described above). All budding journalists are welcome, bienvenue à tous les journalistes en herbe!

SKIT NITE '91: «FOOLS IN LAW» - Last chance to submit your skit ideas for this year's show!!! Submissions for FOOLS IN LAW: «Are there any other kinds of lawyers?» can be dropped off in the Skit NIte box in the LSA office of handed over personally to Jim O'Brien. Volunteers are also needed for all aspects of production including make-up, beer sales, ticket sales, set design, costumes, stage crew and general schlepping. Please make yourselves known to Seth Dalfen, Kurt Johnson or Gordo Levine, or leave us a note in the Skit Nite box. Thanks.

WOMEN & THE LAW - Women & the Law present Judge Rosalie Abella who will speak on «Women's issues in Family Law», on Wednesday March 6th, at 2h00 p.m. in room 202. All are welcome. **ALSO:** Women & the Law present a «Women and Spirituality» film series for the next four Thursdays at 4:00 p.m. in the Student Lounge (next to Sadie's). The first in the series will be shown on Thursday March 7th and is entitled «Goddess remembered».

McGILL INTERNATIONAL LAW SOCIETY - A lecture will take place on March 6th by Prof. Nabil Antaki (President, Le centre d'arbitrage commercial national et international du Québec) on the topic of: «The Role of International Commercial Arbitration in Dispute Settlement», at 12h00 p.m., room T.B.A.

LSA CANDIDATES - Would you lobby for glass recycling in the faculty? How would you get students and faculty to use their own mugs? How would you end the use of disposable cups at coffeehouse? We want your views on environmental issues in the faculty. Let us hear them in your candidate speeches and in the Quid, The Greening or the Faculty Committee.

The Brian Report

by Brian Fell

My public has been clamoring for another issue of the Brian Report (well, one guy asked me if I was going to waste space in the Quid again this term) so here it is: What's Hot and What's Not in the faculty and the world in general. Due to space limitations, I'll have to omit some of the less important stories like sexual gratification at Coffee House and the real story behind those intriguing Valentine's messages but I will treat the important stuff like the new microwave in the cafeteria, the Blue Box program, and the «new look» Supreme Court Reports.

LES ELECTIONS

La période de mise en nomination commence aujourd'hui et se prolonge jusqu'à mercredi. Nous allons essayer cette année de minimiser les dérangements, donc l'affichage, les visites dans les cours, etc... seront davantage contrôlés que par le passé. Par conséquent, les candidats avides de publicités sont invités à soumettre leurs programmes et promesses (max.: 250 mots) au Quid Novi AUJOURD'HUI. Une réunion de tous les candidats aura lieu mercredi à 17h00 au bureau de l'AED où toutes les règles de la campagne seront expliquées.

NCP

A lot of you have heard (or said) that NCP is boring. The truth is that you have only to prepare for it correctly. I spent the entire last summer sitting in the Regina Greyhound station hitting my head with a hammer and, in comparison, I find NCP fascinating and enjoyable. In fact, last night I dreamt that a beautiful woman was trying to seduce me. I tried to resist but my will was bending. Bending, that is, until I looked in my agenda and saw that I was missing a special 8h00 NCP make-up class. Like spinach to Popeye, NCP gave me the extra strength needed to escape. If you don't have the funds for the trip to Regina, try reading statute citators all summer.

WAR

I have no doubt that by the time this goes to press, the «short, violent, and decisive» war in the Gulf will be over. I also had no doubt of that when I first wrote this article 6 weeks ago but kept forgetting to submit it. My Mum says that when Britain went to war with Germany in the fall of 1939, it was all to be over at Christmas of that year. But that was different, right? Anyway, even if it does go on a bit, think of all the good things that come from it. Business is sure to increase for Bombardier, GE, Litton and other stalwarts of our economy. This will take the edge off the current recession (oops, I said the R-word. Oh, well, dangerous times call for dangerous language). Also, our Medical System's ability to deal with poly-traumas and rehabilitate people with missing limbs is sure to increase with the extra practice to come. Even in academia, the war makes for good debate.

And just think of all the peace-time spin-offs to come from battle-tested technology. Why, I can't wait to go jogging in the dark with my night-vision goggles and to install my Patriot defense system against incoming Provigo circulaires. I also have it from an inside source that we will soon have «Smart Garbage». Yes, glass, paper, and tin will search the correct recycling bin when thrown into a myriad of containers. That should solve the problem of orange peels and tin cans in our new Blue Boxes in the halls.-

The cynic's view that media coverage has tempered the disaster of war with euphemisms is, in my view, overstated. We all recognize the language of war as being just that and wouldn't confuse it with our day-to-day speech.

ECHANGES

Il y a quelques mois, Jonathan Burnham et moi avons lancé un appel aux gens intéressés à faire une partie de leurs études de droit à l'étranger. Depuis, nous avons reçu des réponses positives de Belgique et d'Australie. C'est un bon début, et nous espérons que vous serez encore nombreux à nous en parler afin de vous renseigner à ce sujet.

HIGHER GROUND

The more I learn about law, the more I'm convinced that it's intricately and inescapably intertwined with mountaineering. Just think of it: The Expedition and Reception theories in Obs I, the Slippery Slopes everywhere, Special K2 (one of the highest summits), and I could go on and on. Consequently, I do lots of course reading in the catalogues of REI, MEI, Cabela's, and LL.Bean, all suppliers of quality outdoor gear. It seems that they have also picked up on their irrebuttable connection with the law and have redirected their publications accordingly. The latest REI catalogue has bicycle wheels at $750 each and pedals at $175 a pair (US dollars). It's worth it, though. The wheels cut 15 minutes off a 100 mile ride and the pedals allow 35 degrees cornering clearance. Both clearly necessary when that memo is due.

JEUX RIDIQUES

Ya hadda be there. The best part for me was when I said «I shoulda bought the wax ones» and Julie heard «I should lobotomize Waxman» (perhaps I should have). As Lori said, the bus drivers liked us so much they'd like to be our chauffeurs next time too. I guess so. Over 100 passenger tipping about $2 each makes $100 tips for each of them plus their wage, the hotel, and the much-sought-after Law Games T-Shirt. If I get my class 2 license, can I drive next year?

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Part-time Studies

by Ruth-Claire Weintraub, LLB I

It appears Hélène Schneider is not sympathetic to the proposition that we institute a part-time program on the grounds that single parents have been «inappropriately» depicted as «potential beneficiaries» of such a program.

Ms. Schneider says single parents wouldn't benefit because they are «not likely to be able to afford [going to school part-time]». Actually, there are quite a few «mature students» (neither infrequently nor inevitably single parents) - persons of both sexes having real-world responsibilities - jobs, families to support, elderly relatives to care for, etc., who for one reason or another want to study law, to whom a part-time program makes perfect sense. Elsewhere in North America, this accomodation to changing demographics (so many more aging folks than babies!) is a fait accompli, and is evidenced by the fact that a number of Canadian schools (and an even great number of US schools) have instituted part-time/evening programs.

The obvious implication that single parents can't handle a full-time load isn't at all obvious - of course they can: anyone can. IF s/he has a terrific support system and not too many financial worries (if you know a lot of people living out on their own who fill that bill, much less a lot of single parents who do, please send me roses for Mother's Day so I can bask in the reflected glory). I can't speak for all single parents, and I don't know if Ms. Schneider knows many, but from my point of view - having (mostly) single parented for 22 years - it's tragically foolish for anyone to deny that single parenting is a hard job.

Nobody said law school was easy, and doing it part time wouldn't necessarily make it easier - but it sure might make combining it with that complement of normal, ordinary responsibilities that «just happen» (like raising a family, earning a living, etc...) a little saner - a little more rational.

I am profoundly sorry if my use of examples in my article of January 28th has offended anyone. It was certainly not my intenton to do so, and I apologize if this has been the case.

Rosemary Hnatiuk, LLB III

Deep Thoughts

by Dino Mazzone Jr., BCL III

I got to blow off some steam.

War. Separation. Recession. The Expos.

What a bummer!

As I sit in front of my word processor, I feel it is necessary for me to reflect upon some of the news events that have transpired within the last few months .

The following list is a small sampling of the thoughts that race through my mind.

CBS Coverage of the Persian Gulf - And you thought Israel was showing great restraint in not getting involved in this war.

Separatists, sovereignists, nationalists - I can't see a difference. Can you see a difference?

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In praise of part-time access

by Regena Kaye Russell, LLM II/LLB II

When I first began applying to law schools several years ago, I was advised by some women law graduates not to mention that I was single-parenting because this would probably go against me in the law school selection process. This meant that I was supposed to conceal or at the very least down-play my role as a mother, a role I consider to be of immense importance. Their reasoning was that revealing this information may demonstrate my lack of potential for somehow «cutting it» in law school.

I was eventually accepted to the civil law program at UQAM where I initially enrolled on a part-time basis. I was very grateful to have had this choice over the three years it took to complete my studies there. There were some semesters when I felt okay about studying full time but others when I could only muster the emotional and physical courage to atte nd on a part-time basis, depending on what my economic or home situation was like at the time. The choices I have had to make to continue my studies in law are not a reflection on my lack of ability at all. On the contrary, I have had to adopt the attitude that I do what I can under the existing structures, (forget about being an overachiever and receiving a «highest grade» medal!) and cut my losses. Personally, I try not to take over four courses per semester because this feels both manageable and relatively comfortable.

Allowing part-time access to studies in law is about developing and establishing a program which will reflect the real life needs of its student body. Although the single parent is often presented as somewhat of an anomaly, the fact remains that there are some 350 000 single parents in Québec, the vast majority of whom are living below the poverty line. As a result, many have to work outside the home and could only ever contemplate entering post-secondary studies on a part-time basis. Without part-time access, large groups of people become excluded. Anyone receiving welfare or unemployment insurance, for instance, is not able to attend an educational institution on a full-time basis.

The object of part-time access should be to maximize the choices for those who would not necessarily fall within the traditional category of candidates. The young, single, non-working student, with no dependents has been the model to which the present program structures are geared. But it is not difficult to find many law students who are married, with children, for example. Or students who must work during the semester to subsidize their student loans.

McGill University hosted a conference on women on campus last May, called BREAKING THE BARRIERS and one of the main recommendations which came out of the student workshop was the need for part-time access in all faculties. It is obvious, given that many other Faculties of Law have initiated part-time programs across Canada, that McGill's Faculty of Law should accept the inevitable and start breaking some of its own barriers.

Deep Thoughts
Con't from p. 4

René Lévesque - Talk about being at the wrong place at the wrong time.

Bélanger Campeau - No, it's not a law firm which is presently conducting interviews. However, much like a law firm interview, this group of individuals has made up its mind way before they listen to you speak.

The Tim Raines Deal - Why do I have visions of Mark Langston dancing in my head?

The 1990-91 Mt. Canadiens - He shoots, he snores.

The Pete Rose Thing - Why is it that professional baseball is willing to give coked-up ballplayers a second chance, yet is reluctant to forgive a man who has given more to the game than all these drug-induced doorknobs combined?

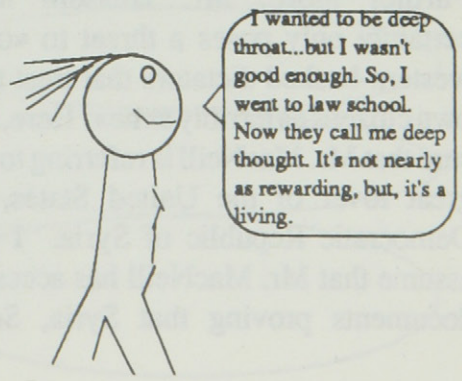
Winter Coats - Is it just me, or have too many women bought that winter coat made of metallic shades of purple and forest green?

Parizeau, Bourassa, Bouchard, Libman - One of these things is not like the other, one of these things just doesn't belong. Can you tell me which is not like the other, before I finish my song?

Jean Chrétien - Jean Chrétien's four ways how not to achieve political popularity in Québec:
(1) Resume law practice in Toronto (Lang Michener)
(2) Get elected Liberal Party chief in Calgary
(3) Represent a federal riding in New Brunswick
(4) Cling to a dying vision of federalism in Ottawa.

Milli Vanilli - Hey, when you look this stupid, you deserve to get nailed.

Ok. I'm relaxed now.



The Plain Truth

by Joshua A. Fireman, BCL I

What a relief. Prior to the February 18, 1991 edition of the Quid Novi, I was a little confused as to what to think about the war in the Persian Gulf. But, thanks to Mr. Kevin MacNeill, my mind is now clear on the issue. I stand, hands held in solidarity with Mr. MacNeill, when I cry out that «THE GULF WAR IS UNJUST!!».

Mr. MacNeill raised a number of cogent and highly rational points in his article for the Quid. I believe that some of these need expanding on, however, to do them true justice. Firstly, I would like to remind everyone that Israel may pose just as much a threat to the Middle East as does Saddam Hussein. After all, according to Mr. MacNeill's rather precise figures, this Zionist state is the fourth largest nuclear power in the world. This, of course, leaves China, the United Kingdom and India fighting it out for fifth spot on this list.

And while I am on the subject of the Israelis, what are they doing in the occupied territories in the first place? Sure, they are in a constant state of war against their Arab neighbours, but hey! Why not let bygones be bygones. It has been years since an Arab country tried to invade Israel. And, I'm sure the Palestinians don't really mean it when they call on Iraq to shower Israel with chemical weapons! Geez, everyone's prone to a little hyperbole now and then.

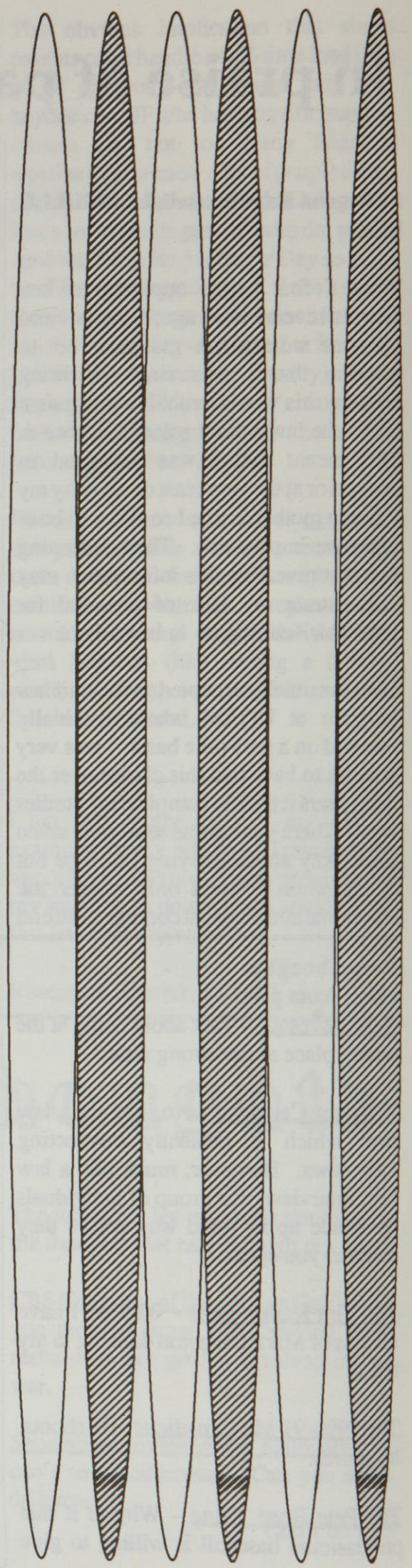
Further more, Mr. Hussein most certainly only poses a threat to «other western-backed dictators that treat their own citizens as terribly as he». Here, I am sure that Mr. MacNeill is referring to that great lover of the United States, the Democratic Republic of Syria. I also assume that Mr. MacNeill has access to documents proving that Syria, Saudi Arabia and Egypt have all used poison gas on their own citizens.

The article in question also asked who would stop the United States after they were done with Iraq. This is indeed a very serious question. I, for one, am certain that following the multi-billion dollar cost of this action and the loss of young american lives, the U.S. will jump at the chance to travel half-way around the world to take on two-bit dictators, with or without the United Nations' consent. After all, this war has already been so much fun for them, why sould this barbaric people want the party to end?

Let's face it. Saddam Hussein isn't really so big a threat that we actually have to risk human life in order to neutralize him. Now that he's a big media star, I doubt he'll go on killing masses of his own people. This sort of thing is really messy and can seriously hurt a guy's image. And, I don't think that he harbours any more desires to lead all of Arabia. Those pictures of him superimposed on the landscape of Mesopotamia were just the result of a few fun hours of finger-painting, right? Further more, remember that Mr. Hussein is a man who is very, very concerned about the fate of those poor Palestinians. Just because he's never helped them in the past doesn't mean that his present concern is just a machiavellian publicity stunt!

William Safire wrote recently in the New York Times that the Gulf War required us all to choose between whichever we felt was more important - peace or freedom. I, however, am not quite sure that a choice is actually necessary. Once those nasty Americans leave Mr. Hussein alone, I am sure that he will feel at peace with himself. Then, he can be free to pursue wonderful, altruistic goals in the Middle East, just as he has in the past.

Manomanoman! It sure is a good thing I read Kevin MacNeill's article!



An Unjust Accusation

by Francis Harvey, B.C.L. I

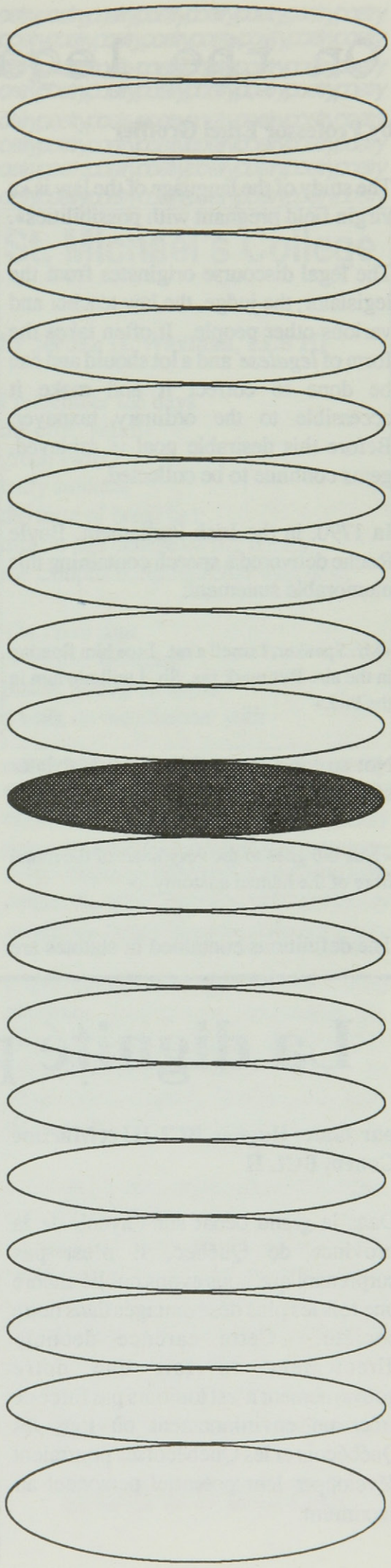
Having submitted my views on the Gulf War to critical analysis, I was expecting an erudite response.. I might have «confused ideas», I might make «medieval assumptions» or defend arguments that «reek of...nonsense», are «naïve» and/or «wrong». I also may «show a glaring lack of imagination and disregard for human life». But I do not accept the label «facist» appended to my arguments. Kevin MacNeill, in his article «Gulf War is Unjust», published in the Quid of February the 18th, did just that.

He writes, apart from the adjectives quoted above, that: «One author put forward the assertion that we in the West should have foreseen that Saddam Hussein would never have accepted a peaceful solution because of his "Arab mentality". That reeks of the same nonsense that posits that many blacks are unemployed because they are "naturally lazy and stupid"... ». The «One author» that is refered to is me. I wish to point out that firstly, this is not at all what I wrote in my article and that secondly, denying the fact that there exists an Arab mentality is also saying that social and cultural anthropology is not a social science worth taking into consideration.

Allow me to make another quotation: «Thus men... imagine that they know practically everything and yet with few exceptions pass blindly one of the most patent principles of Nature's rule: the inner segregation of the species of all living beings on this earth.» This passage is taken from Mein Kampf . Comparing my statement with Kevin MacNeill's quote about black people amounts to say that I wrote something in line with the writings of Adolf Hitler; I think I may safely say that Hitler is a reliable r eference to help identify facist ideology in all its forms. Therefore, from the reading of the article written by Kevin MacNeill, I have defended a fascist argument, so that makes me someone close to being a facist. Such a claim is at best careless.

I wrote in the February 4th Quid: «Le président Bush a donné deux choix au président Hussein: retirer ses troupes du Koweit et perdre la face ou subir les affres de la guerre. Une connaissance sommaire de la mentalité arabe laissait présager avec certitude la réaction du président irakien.» With all the respect I have for my pacifist friend this is not a facist statement. To have an Arab mentality is not a biological trait acquired from particular genes, but a cultural trait acquired through living in the Arab world. The greatest legacy from the French Revolution is that no rights are supposed to be acquired from birth. The trait that I referred to is not that the Arab nation is particularly belligerent and that to make peaceful settlements would be utterly unacceptable to the Arabs; I wrote that losing face is for most people, but for Arabs especially, socially difficult to bear. Saddam Hussein, as the leader of an Arab state, could never have justified to his people and to the Arab nation the unconditional withdrawal from Koweit due to American and international pressures. Hence, my point that president Bush left no choice for Saddam Hussein but to engage his troops in war. As a result, I did not approve of such behaviour from the american president.

In light of Kevin MacNeill's article, I still maintain my support of the Canadian involvement in the Gulf War as long as the objective of the coalition is to drive the Irakian troops out of Kuweit. I only hope that this response sets the record strait.



On the legal discourse

by Professor Ethel Groffier

The study of the language of the law is «a virgin field pregnant with possibilities».

The legal discourse originates from the legislator, the judge, the law teacher and various other people. It often takes the form of *legalese* and a lot should and can be done to correct it and make it accessible to the ordinary taxpayer. Before this desirable goal is achieved, gems continue to be collected.

In 1790, in the Irish Parliament, Boyle Roche delivered a speech containing this memorable statement:

«Mr. Speaker, I smell a rat. I see him floating in the air. But mark me, Sir, I will nip him in the bud.»

Not so long ago, a Michigan legislator said:

«This bill goes to the very heart of the moral fibre of the human anatomy...»

The definitions contained in statutes are often surprising:

«"Midnight deadline" with respect to a bank is midnight on its banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences ro run, whichever is later.» (U.S. Uniform Commercial Code, §4-104(1)(h)).

And what is a banking day?

«"Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions.» (UCC, §4-104(1)(c)).

A bank open at midnight? But not in Canada! Mmm...

As to the style of the courts a short judgment of last century is to be treasured as the epitomy of *legalese*:

«The declaration stated, that the plaintiff theretofore, and at the time of the committing of the grievance thereinafter mentionned, to wit, on, etc..., was lawfully possessed of a certain donkey, which said donkey of the plaintiff was then lawfully in a certain highway, and the defendant was then possessed of a certain wagon and of certain horses drawing the same, which said wagon and horses of the defendant were then under the care, government, and direction of a certain then servant of the defendant, in and along the said highway; nevertheless the defendant, by his said servant, so carelessly, negligently, unskilfully, and improperly governed and directed his said wagon and horses, that by and through the carelessness, negligence, unskilfulness, and improper conduct of the defendant, by his said servant, the said wagon and horses of the defendant then ran and struck with great violence against the said donkey of the plaintiff, and thereby then wounded, crushed, and killed the same, etc...»

(Davies v. Mann, [Exch. 1842] 10 M. & W. 546, 152 Eng. Repr. 588).

More seriously, I think that «Language and the Law» should have a place comparable to «Economics and the Law» or «Psychiatry and the Law». Professor Peter Goodrich in Legal Discourse (New York, 1987) attempted to «introduce the problem of the relationship of law to power, and to some extent to explain the characteristic modes of legal utterance as social discourse - as a hierarchical (stratified), authoritarian (distanced), monologic (uniaccentual) and alien (reified) use of language» (p. 3). I do not believe it is that bad, but still...

La dignité personnelle et l'avenir des

par James Hughes, BCL III et Martine Cohen, BCL II

Dans le grand débat sur l'avenir de la province de Québec, il n'est pas surprenant que nous ayons oublié encore une fois les plus désavantagés dans notre société. Cette carence découle directement du fait que notre gouvernement n'est toujours pas forcé de créer un environnement où tous les Québécois et les Québécoises pourraient développer leur potentiel personnel au maximum.

Nos institutions publiques ne doivent pas seulement représenter ceux et celles qui expriment leurs besoins, mais doivent aussi tenir compte de la masse silencieuse.

Quelle est cette masse silencieuse? Elle est constituée des sans-abris et des chômeurs, des mères de famille qui n'arrivent pas à trouver une garderie d'enfants à prix modique, des enfants mal nourris et des femmes battues. Ce groupe est important et il représentte la classe de personnes qui ont perdu leur dignité personnelle (ou qui n'en ont jamais eu).

La dignité personnelle: cela veut dire qu'on sait comment on va payer son prochain repas ou sa carte de la STCUM. Cela veut dire aussi de ne pas vivre au jour le jour en dépendant de la charité des autres et de ne jamais être isolé au point d'être réduit au désespoir. Cette dignité est plus importante que les droits constitutionnels et plus fondamentale que, par exemple, la possibilité d'être servi chez Eaton dans sa langue maternelle.

Suite a la p. 9

I Shall Go (Belated Valentine Lines and Afterthoughts)

by Tom-Nkwela Likambak, LLB I

Love is not the remembrance
of the fragrance of some perfume
Neither is it in the shapeliest petals
of a crimson rose in the wind
Even if you seek you will not find
Love beneath the boughs of trees at dusk in the summer
Nor upon those strange unknown horizons
that hang somewhere afar
like curtains of eternity.
You will not find love
in the most innocent of verse
for these are merely
the broken reflections of reality
from the cracked mirror
of poets and madmen.

I shall go then, alone
to the Sahara...
And in those immense lyrics
of the endless sands of time
I shall gather together
the lost pieces of my courage -
while the sun above shall bear witness -
to meditate upon the question of quenching
Man's eternal thirst for the wine of love
for which he has time and again
offered his flesh in sacrifice
and his blood as libation,
I shall go.

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St. Michael's College

by Jordan H. Waxman, LLB III

I remember the days
the crisp yellow
green sway
leafy summer
the taste of breakfast
muffin and cheese on my breath,
the campus buildings cold with dew.

The crisp shut
of leather briefcase
inside, hiding an apple
a walk on the charcoal path

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Dignité personnelle...
Suite de la p. 8

Depuis les révolutions française et américaine, la plus grande responsabilité des gouvernements a été de créer un environnement qui donne à un maximum d'individus la possibilité d'avoir une telle dignité.

Un gouvernement ayant adopté cet objectif et possédant les ressources nécessaires pour, par exemple, procurer des logements et des garderies d'enfants à prix modiques, subventionner la nourriture dans les écoles et fonder un système de transport en commun, serait capable de créer un tel environnement. Donc, le modèle social et politique doit donner priorité aux dossiers économiques. Il est regrettable que dans ce régime la culture soit potentiellement sacrifiée, mais celle-ci demeure d'une importance secondaire.

Nous constatons que la restructuration constitutionnelle peut affecter le nombre de personnes défavorisées. Le critère de base pour une telle restructuration doit être fondé sur la façon de répartir les pouvoirs gouvernmentaux afin de mieux aider la masse silencieuse.

Le comité Allaire a basé son rapport sur les ambitions culturelles des Québécois. Il n'y a rien de mal à cela. Toutefois, ceci demeure secondaire.

D'abord, nous pouvons constater que, dans l'application de cet impératif économique, l'élimination d'un palier de gouvernement en ce qui concerne une ou plusieurs juridictions représente un objectif valable. Chacun des pouvoirs constitutionnels faisant l'objet de négociations entre le Québec et le reste du pays doit être examiné dans ce cadre.

Les experts des commissions Bélanger-Campeau et Spicer vont étudier l'impact qu'aurait la souveraineté sur différents aspects de la vie de tous les jours. Nous espérons qu'ils étudieront en priorité l'impact que la souveraineté aura sur les personnes qui ont le plus besoin de nos ressources collectives, tant au Québec qu'ailleurs au pays. Ne les oublions pas.

Legal writing...
Con't from p.1

covenant is *quodammodo* annexed...»

Therein, the principle is abundantly clear on that basis and I need not deal adequately with the matter at this time (see below footnotes 11-207). But we shall have place at length to categorize the matter in regards to the traditional debate: natural commoditation and positive appropriation.

It will take, on the part of the starting writer, prior to publication, years to learn from experience. But illustration can also be at times useful, such as the use of extremely long paragraphs to prevent a reader from gaining s/his attention and then losing it. But I must deviate from this practice here contrariwise to my worst judgment and use shorter prosicity. Citing Pope J.:

«With the same cement, ever sure to bind,
We bring to one dead level ev'ry mind.»

In choosing words, one should not open oneself up to the criticism of succinctness. The reason is because no legal writer ever lost face for saying, in this regard, too little in too many words. For «bulk» is not a term of art alone. It is also a term of sales, and a term most meritorious of the legal writer of merit as well (*credo quia absurdum*). I must also emphasize that your words should not be read aloud for intelligence, for oral text is not always better.

Which brings us roundaboutly to the point. But first, we must consider the facts in Asherton Piggeries, a decision of a court.

Which brings us to the point. The price of law is trees, and they are now fewer, which I think raises some interesting legal issues: A, B and C. Let us consider C: if there is no paper, is there justice? A reasoned analysis would lead us to conclude in the affirmative manner. But is there law? I think not. A is also interesting, but the issue has not been raised in this country (*O! si sic omnia*).

In a conclusionary spirit, we must consider the maxim:

«True ease in writing comes from art, not chance,
As those move easiest who have learn'd to dance.
"Tis not enough no harshness gives offence,
The sound must seem an echo to the sense.»

Albeit, therefore I think we should distinguish it on the facts, as it has something to do with dancing, and legal writing, like any occult science, should be kept separate and distinct from other disciplines to avoid uncertainty in commercial transaction. G__ knows where that slippery slope could lead us.

J.H.V. (CV attached)

Breaking the Silence
Con't from p. 1

itself went well. Maybe you don't realize how much this meant, but it meant a lot. Thank you.

The second thing I guess you might say that the conference has to tell us is that a little enthusiasm, dedication and creativity on the part of a few people can go a long way. Those people spent a lot of their free time over about five months making that one-day event happen. I don't think any of them would doubt that it was worth it. If it hadn't been for their efforts, this conference would not have taken place.

The bigger point I'm making here is this - if there is something which interests you which you don't see the Law Faculty addressing adequately, then it's within your reach to make something happen. At a more general level, this has to do with your education being what you make it, and what you want to learn, not what anyone at the front of the classroom is purporting to teach you (leaving aside that nasty subject of exams).

The third thing is very much a spin-off from the second, and that is that the Aboriginal Law Association is meeting soon (watch for signs) to discuss future plans. Whoever you are, if you would like to be involved, we'd love to see you there. Don't be shy. If you can't make the meeting, give one of us a call.

The fourth thing has to do with the substance of the event itself. I'm not even going to try and condense it into a Quid article for you (buy a transcript...). The point I want to make here is simply that «Native law» is a complex and diverse area. This in turn raises a lot of questions for a law faculty such as McGill. I'm not trying to pick any fights here, but I would especially like the Powers That Be to spare a little mental energy to think about these things.

For instance, does this mean we need a special course on the subject? Probably. Almost every other Canadian law faculty seems to think so, as do a lot of students at McGill. If popular opinion isn't good enough, then maybe you should consider whether it isn't slightly hypocritical for McGill to say it has a «national» programme, and then provide an education which leaves out in-depth consideration of legal issues of fundamental importance to Aboriginal nations.

Should such a course happen yearly? I think so. If it is only offered every second year, then chances are that about half of the students will never have a chance to take it. First year is spoken for, and the obligs of second year leave little flexibility. If «every second year» happens to fall in the second year for a three year student, they will be unlikely to take the class.

What if we don't have the money? With

Con't on p. 11

Breaking the Silence
Con't from p. 10

all due respect, please, tell me another one. McGill has hired several new professors during my short (and maybe rapidly getting shorter) existence at the Faculty. (And I do consider myself extremely fortunate to have had several of them as professors). But why not look for someone qualified to teach Native law next time around? Why not make distributions between subject matters more equitable? For example - environmental law has been taught two years running and this year there are no less than three environment-related courses at the Faculty. Two maritime law courses are taught each year.

One of my friends has said «yeah, but Alison, International Tax is only offered every second year, why should Native law be so special?». Well, for one thing, you can get a basic knowledge of tax every year around here.

Is teaching a yearly course in Native law enough? Probably not. Issues which are described as «Native law» (in the misnomered sense of non-Native law as it affects Natives, as opposed to Native peoples' own law) arise in so many different substantive areas of the law that they should not be merely relegated to a special class where the students who are really interested can learn about them. When these issues are relevant to other courses, they deserve attention, or the treatment of the subject matter remains incomplete. Just as Taxation wouldn't be complete if students were never told that there are penal sanctions to violating the Income Tax Act, and just as Torts wouldn't be complete without mentionning its relationship to Contracts, there are also aspects of so-called «Native law» which warrant attention in order to completely cover other substantive areas.

This isn't a big deal - it just means that, for example, «the Crown owns all the land» might not be the best place to start a Property class - the Guerin case on Aboriginal title should be taught; Sparrow, on fiduciary duty should be taught in Equity and Trusts; s. 35 should be added to the equation of defences in Criminal law; cultural differences in conceptions of «family» and «guilt» should be mentionned in Family and Criminal Law respectively; the Royal Proclamation of 1763 should precede discussion of the Colonial Laws Validity Act in Constitutional Law; and the status of Native Peoples should be addressed in Public International Law. Would this overlap with the Native law course? Probably, but teaching the odd concept twice does not seem to be a big concern at the Faculty - it usually takes us at least that much to learn it.

I recognize that several professors already make such efforts. Two last points about this. First, these profs do not seem to find it too overwhelmingly difficult to integrate these concepts with the rest of their course materials. And second (back to popular appeal), I think there are few students who don't find Guerin a welcome break from cases on moveables and immoveables, who aren't moved by the film on Paulette & Paulette, or who wouldn't be embarrassed 5 years from now to have to admit that they don't know the first thing about Native law, when their big corporate firm is handling a land claim.

And if the Dean needs convincing? Well, I guess he'll come around when he finds out that Toby thinks so too...

Brian Report
Con't from p. 3
VALENTINES

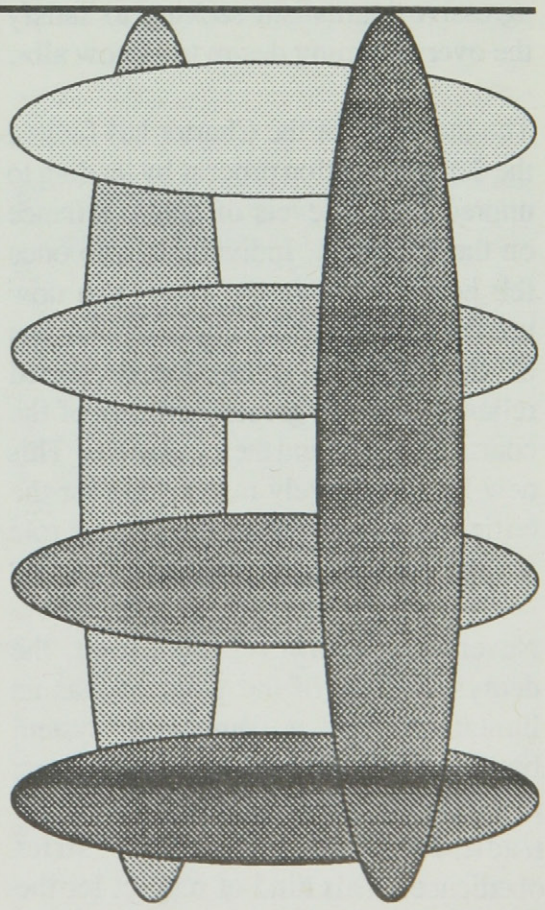
OK, I admit it. I plagearized all those Valentines messages I sent. Not only that, I lip-synched them too. Oh, I'm so glad the charade is over. My producer made me do it. I'm a sham of an imitation of a mockery of a travesty of a shadow of the image of a man and I deserve to be made to finish my degree here. I also caused some trouble between my ex-law partner and her man. Consequently, Mike Morris has resigned from the presidency of LSFIFSBF (Law Students For the Improvement of the Financial Situation of B. Fell) and has spear-headed TARGET (The Abrupt and Ruthless Gory Extermination of the Troublemaker).

[Editor's Note: Well, I think that's enough Brian Fell for one issue, especially since we had two articles from him the last time. Now, if only I could talk to the guy who asked him if he was going to waste some more space in the Quid this term...]

QUOTE OF THE WEEK

Professor Jane Glenn in Equity and Trusts:

«I'm not saying anything interesting. That's why I'm going so fast.»



The Demystification of the Judiciary

by Kelly Mulcair, BCL II and Eric Buzzetti, BCL III

On Tuesday, February 19th, the McGill Law Journal hosted its seventh annual lecture with the Honourable Madame Justice Beverley McLachlin as its guest speaker.

Before a distinguished audience of Law Journal alumni, Madame Justice McLachlin spoke on the topical subject of «The demystification of the judiciary» in the era of the Charter.

«We have come a long way from our traditional conceptions of the judiciary as angels», said Justice McLachlin, citing a better educated public and the Charter of Rights and Freedoms as the major causes in the demystification process.

Higher levels of education have led to a more demanding public and one which is openly critical of the judiciary. Public concern is reflected in increasingly agressive journalism seeking to satisfy the overwhelming desire to «know all».

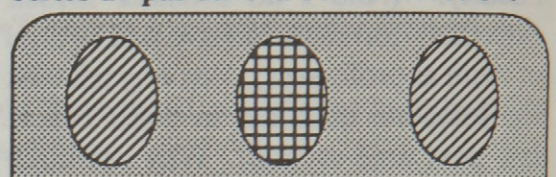
The inception of the Charter has fuelled the demystification process by leading to unprecedented levels of public reliance on the judiciary. Individuals who once felt helpless before the courts can now use the Charter as the ultimate guardian of their rights. With this increased reliance comes a greater scrutiny of the courts, its actors and their functions. This new focus is largely responsible for the critical reassessment of the judge's role as the final arbiter of justice.

Nevertheless, however significant, the demystification of the judiciary has its limitations. In a democratic system based on the rule of law, the courts represent the final authority which has traditionally commanded strict obedience. This kind of respect for the judiciary is not easily overcome, nor should it be entirely. Repeated disruptions in the courtrooms, for example, if left unchecked, would prevent the courts from operating in an effective manner. On the other hand, modern notions of judicial accountability are essential to the fair application of the law. It is here where Madame Justice McLachlin reminds us of the familiar constitutional theme of balancing interests. In the final analysis, the pressure for openness and freedom of speech must, in every case, be weighed against the necessity of maintaining the integrity of our judicial system.

Madame le juge McLachlin a ensuite distingué deux formes d'outrage au tribunal. La première, qu'elle nomme outrage en présence du juge (in the face of the Court), inclut de toute évidence un refus d'obéir à une directive de la Cour. Le juge McLachlin a savoureusement ajouté que le fait de lancer des tomates ou des recueils de jurisprudence en direction d'un magistrat est également classé sous cette rubrique. Logique...

Les propos diffamatoires tenus à l'endroit de la magistrature (scandalizing the judiciary) représentent une seconde forme d'outrage au tribunal. Le juge McLachlin a alors montré qu'une définition trop large de ce concept est susceptible de restreindre indûment la liberté d'expression et qu'une analyse minutieuse des propos tenus s'impose donc dans chaque cas.

Suite à l'avènement de la Charte canadienne, la magistrature s'est vu attribuer des fonctions qu'elle n'avait pas traditionnellement été appelée à remplir. Elle rend désormais des décisions dont l'importance déborde du cadre du litige opposant deux particuliers. Par conséquent, elle doit se montrer réceptive à la critique. Le juge McLachlin croit qu'une critique constructive doit être fondée sur une compréhension à la fois du processus judiciaire dans son ensemble et des êtres humains qui y oeuvrent. Dans cette perspective, son allocution constitue certes un pas dans la bonne direction.



Trial L.A. Law

(Trial By Jury)

The cast of students, staff and faculty is bursting with excitement as Gilbert and Sullivan's catchy, even addictive, music and lyrics are coming alive in the Moot Court. We are rehearsing efficiently for the two performances on Thursday, March 7, at 6 p.m. and at 8 p.m. We can no longer keep this a secret: professor S. Scott is playing the judge; professor R. Sklar is foreman of the jury; professor Jane Glenn is "the other woman" for whom plaintiff has breached his promise of marriage; and professors R. Janda and I. Vlasic are highly musical jurymen. Other leads will be surprises!

Everyone in and outside our faculty is urger to come to listen to Trial By Jury. The small price of your ticket will be a contibution to the Law Library. Don't miss the performance!

Tickets available at LSA, Sadies and at the door